

HONORABLE TANA LIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NEXON KOREA CORPORATION, a Korean
Corporation,

Plaintiff,

v.

IRONMACE CO., LTD., a Korean
Corporation; JU-HYUN CHOI, individually;
and TERENCE SEUNGHA PARK,
individually,

Defendants.

Case No.: 2:23-cv-00576-TL

DECLARATION OF YI-KWON
HWANG IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS FOR *FORUM NON*
CONVENIENS

NOTE ON MOTION CALENDAR:
JULY 14, 2023

ORAL ARGUMENT REQUESTED

I, Yi-kwon Hwang, hereby declare as follows:

1. I am the Deputy Division Manager of the New Development Division at Nexon Korea Corporation ("Nexon"). I am over 18 years of age. The statements made herein, which are based on personal knowledge and my review of Nexon's corporate documents and company records, are known by me to be true and correct, and if called upon, I could and would competently testify to those facts. I submit this declaration in support of Nexon's opposition (the "Opposition") to Defendants' motion to dismiss on grounds of *forum non conveniens* (the "Motion") in the above captioned lawsuit.

Professional Background

2. I first joined a subsidiary of Nexon in 2012. From August 2012 to December 2016, I worked at Nexon GT Co., Ltd., a subsidiary of Nexon. From January 2017 to February 2020, I worked at Nexon RED Corp., a sub-subsidiary company of Nexon. I joined Nexon in March 2020.

3. I have been Director of the Development Technology Department at Nexon since March 2020 as well as Deputy Leader of the New Development Division since April 2020.

4. As Director of the Development Technology Department, I provide technical support to improve productivity in game development. I manage collaboration and issue management tools, and I provide server development support (e.g., developing server engines) and server development resources (e.g., internal servers and necessary cloud resources such as those provided by Amazon Web Services (“AWS”)).

5. As Deputy Leader of the New Development Division, my responsibilities include overseeing human resources tasks (e.g., recruitment, personnel management), authorizing electronic approvals (e.g., expenses), and organizing bi-weekly meetings for Directors of the New Development Division to discuss project development environment, work environment, and organizational management. As a member of the New Development Division Headquarter, I participate in decision-making and project evaluation. I also participate in technical decision-making where I assess and review implementation of new technologies and work environment, such as remote working during the COVID-19 pandemic.

6. I have first-hand involvement with and knowledge of the P3 project (“P3”), including working with Ju-Hyun Choi (“Choi”) in connection with the project. First, as a member of the New Development Division Headquarter, I was one of the people at the division level to evaluate P3 and approve the game to progress to pre-production stage of development. Second, I was also

involved with personnel assignment and recruitment of programmers for the P3 project. I also communicated with Choi about Nexon's restrictions on exporting P3 source code to external servers. Additionally, as Director of the Development Technology Department, I provided the resources and environment necessary for P3 development including collaboration management tools (e.g., Confluence) and issue management tools (e.g., Jira), and I oversaw development servers at Nexon.

Nexon's Business in the United States

7. Nexon is a global producer, developer, and operator of video games. Nexon specializes in online games for personal computers ("PCs") and mobile devices. Directly and through its subsidiaries and affiliates, Nexon has developed and operated more than 80 games across 190 countries. The United States is one of Nexon's largest markets.

8. Nexon is a wholly-owned subsidiary of Nexon Co., Ltd. ("Nexon Co."), a publicly traded Japanese corporation. Within the Nexon group, Nexon acts as the operational head of Nexon group's gaming business. The Nexon group collectively has over 400 employees in the United States. Although Nexon is incorporated in Korea, it has a significant presence and engages in substantial business activities in the United States through its subsidiaries and affiliates.

9. Below is a partial list of Nexon's U.S.-based affiliated companies:

- (a) Nexon America Inc., a subsidiary of Nexon Co., which is headquartered in El Segundo, California, has over 150 employees. Nexon America Inc. introduced micro-transactions and a free-to-play business model in the U.S. market and localizes popular Nexon titles such as "MapleStory" and "Mabinogi" for gameplay by U.S. users. Nexon and Nexon Co. oversee the operations of Nexon America Inc.

1 (b) As part of Nexon's efforts to expand its U.S. base, Nexon established Nexon US
2 Holding Inc. in February 2016. Nexon US Holding Inc. is headquartered in El
3 Segundo, California and has over 30 employees. In 2016, Nexon US Holding Inc.
4 acquired Big Huge Games, Inc. Since then, Big Huge Games, Inc. has been operating
5 as Nexon US Holding Inc.'s subsidiary and continues to produce new titles and
6 maintains "DomiNations."

7 (c) In 2017 Nexon US Holding Inc. acquired Pixelberry Studios, an American mobile
8 game development company. Pixelberry Studios is based in Mountain View,
9 California, and has over 190 employees.

10 (d) Nexon Filmed Entertainment Inc., founded by Nexon Co. initially as Nexon Studios in
11 2021, is based in Beverly Hills, California.

12 (e) In 2022, Nexon Co. purchased a significant minority stake in AGBO. AGBO, a
13 production company based in Los Angeles, California, employs over 100 people. One
14 of AGBO's recent productions is the Academy Award winning film "Everything
15 Everywhere All at Once."

16 10. The United States is one of the Nexon group's biggest markets, and the Nexon group's
17 efforts to expand its U.S. businesses have been successful. For example, Nexon group's revenue
18 from North America in 2022 was 13 billion Japanese yen (approximately USD 90 million).

19 11. Seventeen of the Nexon group's PC games and thirty-three of its mobile games are
20 currently available in the United States.

21 12. PC games popular in the United States include "Vindictus," "MapleStory," and
22 "Mabinogi." Mobile device games popular in the United States include "Choices: Stories You
23 Play," "MapleStory M," and "Blue Archives."

Nexon and the P3 Project

13. Nexon launched the P3 project on July 22, 2020, and invested significant financial resources, time, and manpower to build it. P3 was anticipated to be a game in a unique genre that incorporated first person shooter (FPS), role playing game (RPG), person versus person versus environment (PvPvE), medieval fantasy, dungeon adventure, and extraction shooter. No other Nexon title incorporates all of these gaming elements.

Nexon Fully Supported the P3 Project and Intended to Release the Game

14. Nexon viewed P3 as a promising project. Defendants' statements that Nexon's management lacked faith in P3 and did not support the project are simply false. *See* Dkt.#29, at 3; Dkt.#33, ¶ 10. P3 received positive reviews and was seen as a "fun" game that would be commercially viable.

15. Nexon ran internal playtests to improve P3 by finding the appropriate difficulty level, balancing challenges and rewards throughout the game, implementing a player-friendly interface with a captivating game map, and developing the overall look and feel of the game. During a target group playtest held in April 2021, reviewers provided positive feedback on the "fun" elements of P3. During a May 2021 director group playtest, P3 received positive feedback at the director level regarding P3's genre, character class, PvPvE characteristic, and immersive gameplay.

16. Furthermore, on May 11, 2021, Dae-Hwon Kim, Vice President of Nexon, personally emailed Choi, copying members of Nexon's "New Production All Leaders," "New Production Group," "New Production HQ" and "Dev Strategy Planning" to inform Choi that P3 had completed prototyping and had the green light to enter pre-production. In the same email, Dae-Hwon Kim instructed Choi to move faster so that P3 could be released to the public via early access in

November 2021 and acknowledged that there was a need by Choi's team for a prompt release of P3. In response, Choi said he would prepare P3 with November as the target deadline. A true and correct copy of the email exchange and translation are appended hereto as **Exhibit A**.

17. To support the development of the P3 project, Nexon staffed 23 people on the P3 team. Contrary to Defendants' false claims that the P3 team was staffed with only around 10 people, *see* Dkt.#29, at 3; Dkt.#32, at ¶ 8; Dkt.#33, ¶ 10, 23 Nexon employees worked on P3 from July 2020 to August 2021. The P3 team included eight programmers (including Choi), eleven artists, two game planners (including Terence Park ("Park")), one mobile designer, and one sound designer. Choi was the director of the P3 project, and Park, who is a U.S. citizen, was the Director of Game Development and the lead game designer of the P3 project.

18. Nexon even made exceptions to its usual recruitment policy so that it could add members to the P3 team at an expedited pace. For instance, I permitted exceptions to Nexon's usual recruitment policy so that at least two people could join the P3 team quickly.

19. In addition, Nexon valued Choi and Park as integral members of the P3 project. Choi and Park, who held leadership roles within the P3 project development team, were involved with drafting game planning documents and had access to P3 trade secrets, including source code, build files, and resources. Nexon placed great trust in Choi as a programmer and a project leader. Choi was assigned leadership roles such as the director of the P3 project and Project LF (predecessor of P3).

The P3 Project Rapidly Progressed Through Development Before Park and Choi's

Wrongful Conduct

20. Game development generally progresses in the following stages: pitching, prototyping, pre-production, production, post-production, and launch.

1 21. During the pitching stage of P3 that began in July 2020, P3 team members brainstormed
2 ideas, proposed concepts, and submitted a project proposal.

3 22. In August 2020, P3 entered the prototyping stage. During the prototyping stage that
4 spanned from August 2020 to May 2021, the P3 team produced playable versions of P3, repeatedly
5 revised and tested the game to check the fun and competitiveness elements and assessed the
6 commercial viability of the game. Even though many projects are dropped during the prototyping
7 stage, on May 11, 2021, Nexon's Vice President personally emailed Choi that the P3 project was
8 approved to progress to pre-production, which is the next stage of game development.

9 23. The P3 project officially kicked off pre-production on June 1, 2021. During pre-
10 production, a playable version of the game is finalized after numerous rounds of testing, and
11 detailed plans for the development, distribution, and servicing of the game are set out. However,
12 the P3 project was suspended about halfway through pre-production because half of the P3 team
13 left Nexon to join Ironmace.

14 24. Upon Nexon management's approval, P3 would have entered the production stage
15 where the team would have made modifications to the game based on feedback from milestone
16 reviews and in-house playtests to make a game that can be released to the public.

17 25. Thereafter, P3 would have entered the post-production stage in which external playtests
18 would have been conducted, errors corrected, game performance improved, and business plans
19 drawn.

20 26. Upon Nexon management's approval, P3 would have been launched and distributed to
21 the public.

22 27. Despite the current status of the P3 project, pending the outcome of this case, Nexon has
23 discussed plans to revive P3 and complete development. Based on my experience, Nexon has
24

1 suspended projects but resumed development at a later date. One example is the game titled,
2 “Dave the Diver.” Nexon started development of “Dave the Diver” in 2017, suspended
3 development from 2019 to 2021, but resumed development in February 2021, distributed it via
4 Early Access in October 2022, and released the game in June 2023.

5 **Playable Versions of the P3 Project Game Were Developed and Park and Choi Had Access**
6 **to Them**

7 28. Defendants claim that by the time Choi and Park left Nexon, there was no near-complete
8 version of P3 and it had not crystallized into an actual playable game. *See* Dkt.#32, ¶ 10; Dkt.#29,
9 at 3. That is not correct. In truth, multiple playable prototypes of P3 were produced during game
10 development.

11 29. The first playable P3 prototype was created in August 2020 by Yoonsoo Kim (P3
12 designer). This was a preliminary draft version of P3, and the P3 team continued to develop the
13 game and create other playable versions of P3s, which were code named “alpha map,” “beta map,”
14 and “gamma map.” Each of the maps refer to the locations (or “stages”) of gameplay in P3.

15 30. The P3 team started working on the next playable P3 prototype around December 2020.
16 This P3 prototype, called alpha map, is structured as a cross and includes art resources that
17 correspond to this stage of gameplay. The cross-structure of the alpha map only allowed for basic
18 patterns of gameplay.

19 31. The P3 team started working on the next playable prototype in April 2021. This P3
20 prototype is code named beta map. After repeated testing, the beta map added four new stages and
21 corresponding resources to the existing cross structure of the alpha map. As a result, the beta map
22 offers a more diverse gameplay compared to the alpha map.

32. The P3 team started working on the latest playable P3 prototype in June 2021. This latest prototype is code named gamma map. The gamma map added a dungeon stage to the existing cross structure of the alpha map and the four stages of the beta map and their corresponding resources. Unlike the alpha map and beta map that maintain the same cross-structure and four stages, the gamma map randomly generates a new dungeon for each gameplay. Therefore, the players are introduced to a new dungeon stage rather than the same dungeon each time they play the game, adding to the fun and unexpectedness of the game. Nexon registered the gamma map prototype (July 21, 2021 version) with the United States Copyright Office.

33. Choi, Park, and former P3 team members who joined Ironmace all worked on and had access to these playable P3 prototypes.

Extraction Shooter Feature in the P3 Project Game

34. Defendants attempt to distinguish Dark and Darker from P3 by stating that Dark and Darker is an extraction shooter game, whereas P3 is a battle royale game. *See* Dkt.#32, ¶ 9; Dkt.#29, at 4. This is an inaccurate portrayal. First, both P3 and Dark and Darker apply battle royale game rules. Battle royale rules, derived from professional wrestling, determine the winner of the game in which a large group of players combat one another until only one player (or team) is standing.

35. Second, despite Defendants' claims, P3 is an extraction shooter game. From the start of P3 development, P3 was envisioned to be a medieval fantasy, dungeon adventure, FPS, RPG, PvPvE, and extraction shooter game. P3 was developed by using some of the characteristics present in a prior Nexon project (named Project LF) that was ultimately dropped. The shared characteristics from Project LF include FPS, RPG, medieval fantasy, dungeon adventure, and person versus environment (PvE) elements. To these features, P3 added extraction shooter and

1 person versus person (PvP) features. Simply put, P3 is an extraction shooter game, just like Dark
2 and Darker.

3 36. Defendants mischaracterize P3 by incorrectly stating that it lacks an “escape” or “exit”
4 feature that is common to extraction shooter games. Since the early stages of P3 development, the
5 plan was to add an escape feature to P3; in fact, Choi included this escape feature in the planning
6 documents that were drafted on September 9, 2020, and updated on May 20, 2021. Furthermore,
7 on June 9 and 10, 2021, Yoonsoo Kim (P3 designer) created a basic escape module for P3
8 including a visual representation of the escape feature using a program called Unreal Editor.
9 Around June 15, 2021, Dongwon Che (P3 artist) added graphic assets on top of this module to
10 create a visualization of P3 with the escape feature. This escape feature was incorporated in the
11 gamma map.

12 37. The process of creating the escape feature in P3 is as follows:

- 13 (a) a project manager drafts a proposal that includes the escape feature and corresponding
14 game rules and graphic work;
- 15 (b) a level designer creates the basic module where the escape function will be
16 incorporated;
- 17 (c) a setting/background designer creates 3D models to be used in the game by using
18 programs such as MAX, and then places these graphic assets in the Unreal Editor; and
- 19 (d) a programmer implements the escape feature in accordance with the project manager’s
20 proposal.

21 **Choi and Others Misappropriated P3 Files**

22 38. At the end of June 2021, Nexon discovered that Choi had exported over 11,602 P3 files
23 to his private servers between December 2020 and June 2021 without Nexon’s authorization.
24

1 39. On August 31, 2020, Choi asked me for permission to export P3 source code so that
2 Choi and the P3 team could work remotely during the pandemic. Because P3 was still in the early
3 pitching stage and storing minimal amounts of source code was a low risk, I gave Choi temporary
4 approval for the purpose of testing the source code.

5 40. Starting in or around December 2020, Choi began exporting P3 build files to his private
6 servers. Build files are “packs” of executable files that are compiled from source code, game
7 planning data, audiovisual data, and other data required to run the game. Running the build file
8 will result in a playable version of P3. In short, these build files are from a more advanced stage
9 of P3 game development than the P3 source code. I never gave Choi approval to export P3 build
10 files.

11 41. By February 2021, the P3 project was past the early prototyping stage and Choi should
12 have known that the temporary approval I gave him to export source code for testing was no longer
13 valid.

14 42. Indeed, Choi recognized that he no longer had permission to export source code, as he
15 asked me for permission again to export P3 source code on February 18, 2021. I rejected his
16 request and instructed him to come into the office to work on P3.

17 43. Choi’s unauthorized exports of P3 files include, but are not limited to:

18 (a) 2,747 P3 project build files exported to Choi’s private server located in Seosan, Korea
19 between April 6, 2021, and June 18, 2021;

20 (b) 1,719 P3 project build files exported to Choi’s personal server located in his home in
21 Seongnam, Korea between April 7, 2021, and May 13, 2021;

1 (c) P3 game planning data (1.29 GB) stored in Confluence, a collaboration tool containing
2 planning documents, development plans, and status reports related to P3, exported to
3 and accessed from Choi's home in May 2021; and

4 (d) P3 source code downloaded from Nexon's in-house Git system and exported to Choi's
5 private servers between May 2021 and June 2021.

6 44. Nexon also learned that Choi had solicited P3 team members to leave Nexon to develop
7 a game similar to P3. Upon learning about Choi's recruiting efforts, in June 2021 Nexon conducted
8 an audit. As a result, Nexon discovered that Choi had transferred P3 source code, build files, and
9 other project-related data to his private servers without Nexon's authorization.

10 45. During the audit, Choi initially agreed to cooperate and turn over his private servers so
11 that Nexon could conduct a forensic analysis and assess the extent of the confidentiality breach.
12 However, on the way to inspect the servers, Choi instructed an acquaintance to permanently delete
13 all the files on his private servers. Despite agreeing to give Nexon access to his servers, Choi told
14 Nexon that he had the server wiped multiple times so that the files could not be recovered or
15 viewed.

16 46. On July 21, 2021, Nexon dismissed Choi for cause following an audit and disciplinary
17 hearing. Park left Nexon on August 9, 2021, and subsequently about half of the P3 team left Nexon
18 and joined Ironmace. As a result of losing more than half of the P3 team, Nexon temporarily
19 suspended development of P3 on August 18, 2021.

20 47. Since initiating this action, Nexon has recently learned that two former Nexon
21 employees that joined Ironmace, Sung-wook Hyun (P3 artist) and Tae Woong Lee (P3 artist), had
22 illicitly downloaded confidential P3 data before leaving Nexon.

New Evidence of Misappropriation Have Come To Light

48. Since filing its complaint, Nexon has learned that on June 29, 2021, Sung-wook Hyun downloaded P3 data to an external hard drive. Moreover, on August 10, 2021, he downloaded P3 data including the list of purchased assets. The next day, on August 11, 2021, Sung-wook Hyun informed Nexon of his intent to leave and ultimately left the company on August 31, 2021 before joining Ironmace.

49. Nexon also learned that Tae Woong Lee exported P3 data from Nexon without authorization from June 25, 2021, to July 6, 2021. He also exported additional P3 data between August 6 and August 18, 2021, using iCloud. He left Nexon on September 1, 2021 before joining Ironmace.

The United States Is the Largest Market for Dark and Darker

50. After Choi and Park left Nexon, they co-founded Ironmace on October 20, 2021. When Ironmace released Dark and Darker playtests, I, along with other Nexon employees, was shocked to learn that Dark and Darker was almost identical to P3.

51. Based on information posted by Defendants, the playtests for Dark and Darker were popular, especially among players in the United States. After each playtest, Defendants posted the playtest statistics (available on GameCharts) on the “Dark and Darker” server of Discord, including a breakdown of the demographics of Dark and Darker players by country. The statistics show that for all five Dark and Darker playtests, the number of players from the United States far exceeded the number of players from any other country.

52. For the first playtest, about 6,000 players, comprising 66.34% of all Dark and Darker players, were from the United States. Players from Korea comprised just 5.21%. For the second playtest, 266,906 Steam accounts were created and 45.8% of all Dark and Darker players were

1 from the United States. The second biggest demographic was Canadian players at 6.51%. Players
2 from Korea comprised only 3.73% of all players. For the third playtest, 1,144,273 Steam accounts
3 were created and 38.67% of all Dark and Darker players were from the United States. The next
4 highest demographic was Japanese players at 7.94%. Players from Korea only accounted for
5 4.56% of the players. For the fourth playtest, 1,903,938 Steam accounts were created and 31.52%
6 of the players were from the United States. The next highest demographic was Japanese players
7 at 11.32%. Players from Korea accounted for 10.12% of the players. For the fifth and latest
8 playtest, only 457,181 accounts—a fraction compared to the number of accounts created in the
9 previous playtests—were created. Despite the lower number of participants, 39.23% of Dark and
10 Darker players were from the United States, with Japan making up the second highest demographic
11 at 7.67%. Because the fifth playtest was geo-blocked (restricted by geographic location) and not
12 made available to players in Korea, the statistics do not reference Korean players. Relevant
13 excerpts of the playtest statistics posted by Defendants on Discord are attached hereto as
14 **Exhibit B.**

15 53. Pursuant to the Game Industry Promotion Act, in most cases, a rating (or classification)
16 from the Game Rating and Administration Committee must be obtained before a game can be
17 serviced in Korea. In the latest playtest that was conducted via BitTorrent in April 2023, Ironmace
18 announced that it could not service Dark and Darker in Korea due to compliance issues with
19 Korean game rating regulations. Thus, access to Dark and Darker was geo-blocked for Korean
20 players and they could not participate in the April 2023 playtest.

Source Code for Darker and Darker Is in English

54. In the Motion, Defendants state that “the source code and programming notes that show how *Dark and Darker* was built . . . are all in Korean.” Dkt.#29, at 5. Based on my experience in the gaming industry, Defendants’ statement is misleading.

55. “Source code” is a collection of instructions in a computer programming language that tell a computer how to execute a program. Source code is the fundamental basis of a computer program. “Programming notes” usually refer to notes in a natural language that explain or provide commentary on the source code. A computer executes a program based on source code, but it does not execute a program based on programming notes.

56. The supporting declarations on which Defendants rely to make this statement are narrower and do not state that the “source code” or “source code and programming notes” are all in Korean. Instead, they only state that ancillary documentation related to *Dark and Darker* and internal team notes are in Korean.

(a) Choi states in his declaration, “[t]he source code and its development records, which demonstrate the construction method of *Dark and Darker*, will clearly confirm that we developed *Dark and Darker* without using any proprietary assets or code from Nexon Korea. Our internal team discussed and documented the programming of *Dark and Darker* all in Korean.” Dkt.#32, ¶ 19 (emphasis added).

(b) Park states in his declaration, “[t]he source code and programming notes showing how the game was built will also confirm that we did not use any proprietary assets or code from Nexon in building *Dark and Darker*. Our internal team notes that we used when programming *Dark and Darker* are all in Korean.” Dkt.#33, ¶ 15 (emphasis added).

1 57. Nexon wrote P3 source code in C++ programming language using the Unreal Engine
2 and revised the source code using Microsoft Visual Editor. C++ is a programming language that
3 is built on the English alphabet. Almost all source codes for Nexon's games are based in English,
4 and, because mainstream programming languages used in the industry are built in English, source
5 code in videogames are inherently written in English. Considering Dark and Darker is created
6 using the Unreal Engine, it is certainly likely that the source code of Dark and Darker is also based
7 in English, and Choi and Park never state otherwise.


8 58. For both P3 and Dark and Darker, the textual elements of the two games are in English.
9 For instance, the names of the character class, description and inventory of equipment and
10 weapons, player statistics (strength, dexterity, intelligence, speed, etc.,) are all written in English.

11 **Ironmace Has Received Funding from Investors**

12 59. Defendants imply that as a small independent gaming studio, Ironmace cannot afford to
13 litigate this lawsuit. *See* Dkt.#29, at 2. However, even before Choi left Nexon, he told the P3 team
14 members that he had secured funding from investors for the new company and that they should
15 leave Nexon with him. I also read in a March 14, 2023, article in *MTN News* that as of April 2022,
16 the total number of shares issued by Ironmace exceeded 500,000, and that additional shares have
17 been issued since. According to this report, Must Ventures, a venture capital firm based in Korea,
18 and another venture capital firm are said to have invested in Ironmace in April 2022.

19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct to the best of my knowledge.

21 EXECUTED this 10th day of July 2023 at Gyeonggi, Korea.

22
23 
24 Yi-kwon Hwang